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J.M., Appellant)	
)	
and)	Docket No. 21-0504
)	Issued: September 3, 2021
U.S. POSTAL SERVICE, POST OFFICE,)	
San Juan, PR, Employer)	
)	

Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

DECISION AND ORDER

ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On February 16, 2021 appellant, through counsel, filed a timely appeal from a February 3, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof to establish a medical condition causally related to the accepted May 22, 2020 employment incident.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On June 19, 2020 appellant, then a 46-year-old postal vehicle maintenance operator, filed a traumatic injury claim (Form CA-1) alleging that on May 22, 2020 she suffered a right wrist injury when loading a vehicle while in the performance of duty. On the reverse side of the claim form, the employing establishment acknowledged that she was injured in the performance of duty. Appellant did not stop work.

In support of her claim, appellant submitted a work excuse note, dated May 26, 2020, from Dr. Nancy E. Alicea Valentin, a specialist in physical medicine and rehabilitation. Dr. Valentin noted diagnoses of thoracic radiculopathy, lumbosacral radiculopathy, right shoulder tenosynovitis, right forearm tenosynovitis, right wrist contracture, and thigh myositis. She indicated that appellant could return to work on June 8, 2020.

In a development letter dated June 23, 2020, OWCP informed appellant that the evidence of record was insufficient to establish her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence. No additional evidence was received.

By decision dated August 3, 2020, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between appellant's diagnosed conditions and the accepted May 22, 2020 employment incident.

On August 17, 2020 appellant requested reconsideration and submitted a July 27, 2020 report from Dr. Valentin. Dr. Valentin noted that appellant experienced bilateral wrist, hand, neck, back, and left shoulder pain after loading a platform plate onto the back of a work vehicle on May 22, 2020. She provided appellant's medical history and physical examination findings. Dr. Valentin reviewed x-rays of appellant's bilateral wrists, hands, shoulders, thoracic spine, and lumbosacral spine and diagnosed cervicodorsal myositis, lumbosacral myositis, cervical radiculitis, post-traumatic cervicodorsal back strain, right shoulder tenosynovitis, left shoulder tenosynovitis, right hand tenosynovitis, left hand tenosynovitis, right elbow tenosynovitis, and left elbow tenosynovitis. She opined that appellant's conditions were causally related to the accepted employment incident. Dr. Valentin noted that appellant's maneuvering created an axial load during the acceleration and deceleration motion, which caused increased intraspinal pressure along her intervertebral discs and associated spinal nerves at the cervical, thoracic, and lumbosacral levels. She indicated that appellant's repetitive pushing, pulling, lifting, and carrying physical loads and equipment led to additional excessive microcumulative disorder, which was aggravated by the employment incident. Dr. Valentin advised that appellant was unable to tolerate prolonged overhead reaching, managing heavy physical loads with both arms, and repetitive upper extremity movements. She opined that appellant had not reached maximum medical improvement (MMI).

On August 18, 2020 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review, which was held on October 14, 2020. During the hearing, appellant described the employment incident and clarified that she experienced left shoulder and right wrist injuries.

By decision dated November 19, 2020, OWCP's hearing representative affirmed the August 3, 2020 decision, finding that the medical evidence of record did not provide a detailed discussion of appellant's preexisting underlying conditions.

On December 22, 2020 appellant, through counsel, requested reconsideration and submitted a November 9, 2020 report from Dr. Valentin. Dr. Valentin again provided appellant's medical history and physical examination findings. She diagnosed cervicodorsal myositis, lumbosacral myositis, cervical radiculitis, post-traumatic cervicodorsal back strain, right shoulder tenosynovitis, left shoulder tenosynovitis, right hand tenosynovitis, left hand tenosynovitis, right elbow tenosynovitis, and left elbow tenosynovitis. Dr. Valentin opined that appellant's conditions were related to the accepted employment incident. She noted that the employment incident caused appellant's paravertebral muscle spasms along the cervicodorsal/lumbosacral spine region, which triggered vertebral compression due to contracting muscles and soft tissue swelling, leading to radicular symptoms secondary to nerve root irritation within the narrowed foramens. Dr. Valentin indicated that appellant's maneuvering to prevent injury created an axial load during the acceleration and deceleration motion, which resulted in compression of the spinal nerves and overstretching of the spinal ligaments along the cervicodorsal/lumbosacral spine. She reported that this overstretching produced local inflammation reaction affecting pain and irritation of the muscular tissue and injured nerve roots. Dr. Valentin opined that rapid acceleration/deceleration with change in directional forces caused the cervicodorsal/lumbosacral muscles to strongly contract and shorten their lengths to stabilize appellant's spine and prevent fracture or dislocation. She noted that these forces resulted in microscopic tearing of appellant's shortened muscles, their associated tendons, and surrounding ligaments. Dr. Valentin also indicated that appellant's maneuvering caused increased intraspinal pressure along her intervertebral discs and associated spinal nerves at the cervical, thoracic, and lumbosacral levels. She again reported that the employment incident aggravated appellant's excessive microcumulative disorder and advised that appellant was unable to tolerate prolonged overhead reaching, managing heavy physical loads with both arms, and repetitive upper extremity movements. Dr. Valentin opined that appellant had not reached MMI.

By decision dated February 3, 2021, OWCP denied modification of the November 19, 2020 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,⁴ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the

³ *Id.*

⁴ *S.O.*, Docket No. 21-0002 (issued April 29, 2021); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

employment injury.⁵ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁶

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.⁷

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.⁸ The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and specific employment factors identified by the employee.⁹

In a case in which a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.¹⁰

ANALYSIS

The Board finds that this case is not in posture for decision.

In support of her claim, appellant submitted reports from Dr. Valentin dated July 27 and November 9, 2020. Dr. Valentin diagnosed cervicodorsal myositis, lumbosacral myositis, cervical radiculitis, post-traumatic cervicodorsal back strain, right shoulder tenosynovitis, left shoulder tenosynovitis, right hand tenosynovitis, left hand tenosynovitis, right elbow tenosynovitis, and left elbow tenosynovitis and opined that appellant's conditions were causally related to the accepted May 22, 2020 employment incident. She provided a pathophysiological explanation of how appellant's maneuvering to prevent getting injured by a container created an axial load during the

⁵ *R.J.*, Docket No. 20-1630 (issued April 27, 2021); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *J.C.*, Docket No. 20-1584 (issued April 23, 2021); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *K.M.*, Docket No. 21-0016 (issued April 21, 2021); *Elaine Pendleton*, 40 ECAB 1143 (1989); *John J. Carlone*, 41 ECAB 354 (1989).

⁸ *J.B.*, Docket No. 21-0011 (issued April 20, 2021); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

⁹ *P.C.*, Docket No. 20-0855 (issued November 23, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *C.C.*, Docket No. 19-1071 (issued August 26, 2020); *V.W.*, Docket No. 19-1537 (issued May 13, 2020).

acceleration and deceleration motion, which resulted in compression of the spinal nerves and overstretching of the spinal ligaments along the cervicodorsal/lumbosacral spine. Dr. Valentin noted that this overstretching produced local inflammation reaction affecting the muscular tissue and injured nerve roots. She opined that rapid acceleration/deceleration with change in directional forces caused the cervicodorsal/lumbosacral muscles to strongly contract and shorten their lengths to stabilize appellant's spine and prevent fracture or dislocation. Dr. Valentin indicated that these forces resulted in microscopic tearing of appellant's shortened muscles, their associated tendons, and surrounding ligaments. She explained that appellant's maneuvering caused increased intraspinal pressure along her intervertebral discs and associated spinal nerves at the cervical, thoracic, and lumbosacral levels. Dr. Valentin also advised that appellant's repetitive work duties caused her underlying excessive microcumulative disorder, which was aggravated by the employment incident.

The Board finds that, while Dr. Valentin's report was not completely rationalized, it is sufficient to require further development of the medical evidence.¹¹ Dr. Valentin accurately described the May 22, 2020 employment incident and provided an explanation as to how it resulted in his diagnosed conditions. Further, she is a Board-certified physician who is qualified in her field of medicine to render an opinion on causal relationship. The Board has held that it is unnecessary that the evidence of record in a case be so conclusive as to suggest causal connection beyond all possible doubt. Rather, the evidence required is only that necessary to convince the adjudicator that the conclusion drawn is rational, sound, and logical.¹² Although Dr. Valentin's opinion is insufficiently rationalized to establish causal relationship, it does raise an uncontroverted inference regarding causal relationship between the diagnosed condition and the accepted employment incident sufficient to require that OWCP further develop the medical evidence in the claim.¹³

It is well established that proceedings under FECA are not adversarial in nature and, while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.¹⁴ OWCP has an obligation to see that justice is done.¹⁵

The Board will therefore remand the case to OWCP for further development of the medical evidence. On remand OWCP shall refer appellant, a statement of accepted facts, and the medical record to a specialist in the appropriate field of medicine. The chosen physician shall conduct a physical examination and provide a rationalized medical opinion as to whether appellant's diagnosed conditions are causally related to the accepted May 22, 2020 employment incident. If the physician opines that the diagnosed conditions are not causally related, he or she must explain

¹¹ See *E.G.*, Docket No. 20-1184 (issued March 1, 2021).

¹² *W.M.*, Docket No. 17-1244 (issued November 7, 2017); *E.M.*, Docket No. 11-1106 (issued December 28, 2011).

¹³ *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *D.S.*, Docket No. 17-1359 (issued May 3, 2019); *William J. Cantrell*, 34 ECAB 1223 (1983).

¹⁴ See *H.H.*, Docket No. 20-0839 (issued May 25, 2021); *M.G.*, Docket No. 18-1310 (issued April 16, 2019); *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985).

¹⁵ See *A.C.*, Docket No. 20-1127 (issued May 19, 2021); *C.M.*, Docket No. 17-1977 (issued January 29, 2019); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

with rationale how or why the opinion differs from that of Dr. Valentin. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the February 3, 2021 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: September 3, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board